

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

JUAN SANCHEZ,

Plaintiff,

V.

**WESLEY SMITH DALLAS, WESLEY SMITH
DALLAS d/b/a DALLAS TRUCKING, CLINTON
DORRIS, CLINTON DORRIS a/k/a HOMER
CLINTON DORRIS, and CLINTON DORRIS
d/b/a EVERY SAVINGS POSSIBLE**

Defendants.

Judge Cedarbaum

Docket No.: 08 CV 0055

ANSWER TO SUMMONS AND VERIFIED COMPLAINT

Defendants Wesley Smith Dallas s/h/a Wesley Smith Dallas, Wesley Smith Dallas d/b/a Dallas Trucking, and Homer Clinton Dorris s/h/a Clinton Dorris, Clinton Dorris a/k/a Homer Clinton Dorris, and Clinton Dorris d/b/a Every Savings Possible by their attorneys, Newman Fitch Altheim Myers, P.C., as and for their answer to plaintiff's verified complaint, allege upon information and belief as follows:

FIRST: Deny having knowledge or information sufficient to form a belief as to the allegations contained in paragraphs "1", "3", "4", "5", "6", "7", "8", "9", "10", "11", "12", "13", "20", "21", "22", "23", "26" and "27" of plaintiff's verified complaint.

SECOND: Admit each and every allegation contained in paragraph "2" of plaintiff's verified complaint.

THIRD: Deny having knowledge or information sufficient to form a belief as to the allegations contained in paragraphs "14", "15", "16", "17", "18" and "19" of plaintiff's

verified complaint, except to admit that Wesley Smith Dallas operated a vehicle with the permission and consent of the owner.

FOURTH: Deny each and every allegation contained in paragraphs "24", "25", "28", "29", "30", "31" and "32" of plaintiffs' verified complaint.

**AS AND FOR A FIRST, SEPARATE
AND COMPLETE AFFIRMATIVE DEFENSE**

FIFTH: Plaintiff lacks personal jurisdiction over defendant Homer Clinton Dallas s/h/a Clinton Doris, Clinton Dorris a/k/a Homer Clinton Dorris, and Clinton Dorris d/b/a Every Savings Possible for failure to effectuate proper service.

**AS AND FOR A SECOND, SEPARATE
AND COMPLETE AFFIRMATIVE DEFENSE**

SIXTH: Plaintiff's action against Wesley Smith Dallas s/h/a Wesley Smith Dallas, Wesley Smith Dallas d/b/a Dallas Trucking is stayed and/or barred by the provisions of the applicable Bankruptcy statutes in light of Mr. Dallas' filing of a Chapter 7 proceeding on or about November 16, 2007.

**AS AND FOR A THIRD, SEPARATE
AND COMPLETE AFFIRMATIVE DEFENSE**

SEVENTH: The plaintiff causes of action is barred by the Insurance Law §§ 5102 and 5104 in that the plaintiff and the answering defendants are "covered persons" and Insurance Law § 5104 states that in any action by or on behalf of a "covered person" for personal injuries arising out of negligence in the use or operation of a motor vehicle in this state, there shall be no right to recovery for a non-economic loss, except in the case of "serious injury" or economic loss greater than basis economic loss as defined in said Insurance Law.

**AS AND FOR A FOURTH, SEPARATE
AND COMPLETE AFFIRMATIVE DEFENSE**

EIGHTH: That in the event of any judgment or verdict on behalf of the plaintiff, these defendants are entitled to a set-off or verdict with respect to the amounts of any payments made to the plaintiff for medical and other expenses prior thereto pursuant to § 4545 of the CPLR.

**AS AND FOR A FIFTH, SEPARATE
AND COMPLETE AFFIRMATIVE DEFENSE**

NINTH: If the injuries and damages were sustained by the plaintiff at the time and place, and in the manner alleged in the complaint, such damages and injuries are attributable, in whole or in part, to the comparative negligence and culpable conduct of the plaintiff, and if any damages are recoverable against the defendants the amount of such damages shall be diminished in proportion which the comparative negligence and culpable conduct attributable to the plaintiff bears to the culpable conduct which caused the damages.

**AS AND FOR A SIXTH, SEPARATE
AND COMPLETE AFFIRMATIVE DEFENSES**

TENTH: Upon information and belief, the liability for the subject incident may have already been determined, in part or in whole, in a prior proceeding and the doctrines of res judicata and collateral estoppel may therefore apply.

**AS AND FOR A NINTH, SEPARATE
AND COMPLETE AFFIRMATIVE DEFENSES**

THIRTEENTH: Plaintiff's action is barred by the expiration of the applicable statute of limitations.

CONCLUSION

WHEREFORE, these answering defendants Wesley Smith Dallas s/h/a Wesley Smith Dallas, Wesley Smith Dallas d/b/a Dallas Trucking and Homer Clinton Dorris s/h/a

Clinton Dorris, Clinton Dorris a/k/a Homer Clinton Dorris, and Clinton Dorris d/b/a Every Savings Possible demand judgment dismissing the plaintiff's verified complaint, together with the costs and disbursements of this action.

Dated: New York, New York
January 7, 2008

Respectfully submitted,

NEWMAN FITCH ALTHEIM MYERS, P.C.
Attorneys for Defendants
WESLEY SMITH DALLAS s/h/a WESLEY
SMITH DALLAS, WESLEY SMITH
DALLAS d/b/a DALLAS TRUCKING, and
HOMER CLINTON DORRIS s/h/a
CLINTON DORRIS, CLINTON DORRIS
a/k/a HOMER CLINTON DORRIS, and
CLINTON DORRIS d/b/a EVERY SAVINGS
POSSIBLE

s/Charles W. Kreines

CHARLES W. KREINES [8357]
14 Wall Street - 22nd Floor
New York, New York 10005-2101
Telephone: (212) 619-4350
Our Ref. No.: CI 16433

TO: MICHAEL S. MURPHY
Attorneys for Plaintiff
JUAN SANCHEZ
25-28 Broadway
Astoria, New York 11106
(718) 267-1717

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ATTORNEY'S VERIFICATION

STATE OF NEW YORK)
)
) :SS.:
COUNTY OF NEW YORK)

CHARLES W. KREINES, an attorney admitted to practice in the State of New York, affirms: That the undersigned is a Member of the firm of NEWMAN FITCH ALTHEIM MYERS, P.C., attorneys for Defendants, Wesley Smith Dallas s/h/a Wesley Smith Dallas, Wesley Smith Dallas d/b/a Dallas Trucking, and Homer Clinton Dorris s/h/a Clinton Dorris, Clinton Dorris a/k/a Homer Clinton Dorris, and Clinton Dorris d/b/a Every Savings Possible in the within action; that the undersigned has read the foregoing **Verified Answer to Summons and Verified Complaint** and knows the contents thereof; that the same are true to affirmant's own knowledge, except as to the matters therein stated to be alleged on information and belief; and as to those matters affirmant believes them to be true.

The undersigned further states that the reason this affirmation is made by the undersigned and not by defendants are that the defendants are outside the county where the undersigned maintains his offices.

The undersigned affirms that the foregoing statements are true, under the penalty of perjury.

Dated: New York, New York
January 7, 2008

s/Charles W. Kreines

CHARLES W. KREINES [8357]

CERTIFICATE OF SERVICE

I hereby certify that the answer to summons and verified complaint has been served on the attorney for plaintiff at the following last-known address:

Attorneys for Plaintiff
JUAN SANCHEZ
25-28 Broadway
Astoria, New York 11106
(718) 267-1717

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

s/Charles W. Kreines

CHARLES W. KREINES [8357]

Dated: January 7, 2008